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 GI Plum Holdco, LLC; and Quince Holdings  
 LLC dba Pueblo Springs Rehabilitation Center

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

PLUM HEALTHCARE GROUP, LLC,  
 etc., et al.,

Plaintiffs,

v.

ONE BEACON PROFESSIONAL  
 INSURANCE, etc., et al.,

Defendants.

CASE NO. 15CV2747W MDD

DECLARATION OF RICHARD  
 HUVER IN OPPOSITION TO  
 DEFENDANTS' MOTION FOR  
 SUMMARY JUDGMENT OR  
 PARTIAL SUMMARY  
 JUDGMENT

Date: April 24, 2017

Judge Thomas J. Whelan

**[NO ORAL ARGUMENT  
 PURSUANT TO LOCAL RULE]**

I, RICHARD HUVER, declare and state as follows:

1. I am an attorney duly licensed to practice law before all the courts in the State of California and all Federal District Courts in California. I am one of the attorneys of record for the plaintiffs in the above-entitled matter. The following facts are of my own personal knowledge and, if called as a witness, I could and would competently testify to the following:

1           2.     This declaration is submitted in opposition to Defendants' motion  
2 for summary judgment or partial summary judgment.

3           3.     The first notice of the Harris lawsuit by Plum was on November 14,  
4 2014. (See Defendants' Exhibit 2.) Claims adjuster Daniele Freaner was first  
5 assigned to handle Plum's claim on November 17, 2014. (Freaner Dec., ¶7.)

6           4.     Defendants' claims file indicates that by November 19, 2014, 2 days  
7 later, Freaner and her supervisor Maureen Ringland, had "decided" to deny  
8 Plum's claim based solely on the "Insured v. Insured" Exclusion (D)(7).  
9 (Freaner Dec., ¶8, 9, 11.)

10          5     Defendants' denial letter dated December 9, 2014, asserted only one  
11 exclusion - Exclusion (D)(7), the "Insured v. Insured" exclusion, as the basis for  
12 denying Plum's claim for a defense and indemnity against the Harris lawsuit.  
13 (Freaner Dec., ¶15 and Exhibit 5.

14          6.     Plaintiffs filed suit on December 8, 2015. (Docket No. 1.)

15          7.     In August 2016, as soon as was permitted by the Court, plaintiffs  
16 served written discovery on defendants, seeking every fact, witness and writing  
17 upon which defendants based their denial of plaintiffs' claim for legal defense  
18 and indemnity against the Harris lawsuit, and requesting the identity of every  
19 paragraph or provision of defendants' policy which served as the basis for  
20 denying plaintiff's claim.

21          8.     Defendants provided their responses on October 13, 2016, in which  
22 they relied on only two Exclusions - (B)(9), the "Owned Auto" exclusion, and  
23 (D)(7), the "Insured v. Insured" exclusion.

24          9.     Based on defendants' responses to this discovery, as well as their  
25 initial disclosures which included the denial letters and claims file, plaintiffs  
26 noticed the deposition of Homeland's claims manager, Maureen Ringland, for  
27 October 15, 2016, traveling to Colorado to do so. Defendants designated Ms.  
28 Ringland as their 30(b)(6) person most qualified to testify to all issues regarding

1 the handling and denial of plaintiffs' claim as well. Plaintiffs later deposed  
2 Homeland's claims handler Daniele Frenor on January 24, 2017, again based on  
3 and relying on all of the evidence disclosed by defendants.

4 10. Defendants' motion for summary judgment, filed on the motion and  
5 discovery cut-off date, asserted two new policy exclusions for the first time -  
6 (D)(2) and (D)(5). Neither of these exclusions were disclosed by defendants at  
7 any point prior to the discovery cut-off. Eight days after the discovery cut-off  
8 expired, on March 18, 2017, defendants' new attorneys purported to amend  
9 defendants' earlier interrogatory responses to assert these new exclusions, while  
10 also adding 8 pages of additional affirmative and factual defenses.

11 11. Plaintiffs are severely prejudiced and unfairly surprised by these  
12 late, post discovery cut-off changes of position, assertion of new affirmative  
13 defenses and embellishing on legal and factual defenses. Plaintiffs have  
14 prepared their entire case, conducted written discovery, taken and defended  
15 depositions, and retained an expert who has prepared his Rule 26 Report, at great  
16 time and expense, all based on the positions taken by defendants up to the close  
17 of discovery. To permit defendants to change their positions at this late date,  
18 assert new defenses in their motion for summary judgment, is extremely unfair,  
19 highly prejudicial to plaintiffs' preparation of this case for trial, and should not  
20 be sanctioned.

21 12. On December 29, 2016, plaintiffs served their first set of requests  
22 for admission and second set of special interrogatories on defendant Homeland  
23 Insurance Company. (See attached Exhibit 10.) Responses were due no later  
24 than January 31, 2017. No responses were ever received and no request for an  
25 extension was ever received or granted.

26 13. On February 17, 2017, plaintiffs notified defendants in writing of  
27 their failure to timely serve responses to the requests for production. (See  
28 attached Exhibit 11.)

1           14. On February 22, 2017, counsel met and conferred following a failed  
2 settlement conference to discuss certain discovery issues. During this meeting,  
3 defense counsel Matt Elstein and Lorrie Walker were present. Mr. Elstein stated  
4 that defendants had timely served responses to the request for admissions,  
5 claimed that something must have happened in his firms' mail room, and assured  
6 plaintiffs that he would promptly provide the purportedly timely-served  
7 responses. As of the date of this declaration, no motion for relief from failing to  
8 timely respond to the requests for admission has been filed.

9           15. On March 10, 2017, 7 days after defendants' new attorneys filed  
10 notices of association, attorney Randy Crispin sent an e-mail, attached hereto as  
11 Exhibit 13, wherein he acknowledged that "there was no determination as to  
12 whether Ms. Harris was acting within the course and scope of employment in the  
13 underlying Harris lawsuit."

14           16. Attached hereto as Exhibit 1 is a true and correct copy of portions of  
15 the deposition of Daniele Freaner, Claims Adjuster for defendant Homeland/One  
16 Beacon, taken on January 24, 2017.

17           17. Attached hereto as Exhibit 2 is a true and correct copy of portions of  
18 the deposition of Maureen Ringland, Vice President of Homeland, claims  
19 manager, and direct supervisor of Daniele Freaner, taken on October 15, 2016.

20           18. Attached hereto as Exhibit 3 is a true and correct copy of portions of  
21 the deposition of John Romero, the Facility Rehabilitation Director for Quince  
22 Holdings, LLC dba Pueblo Springs Rehabilitation at the time of Harris's  
23 accident, taken on March 31, 2015. The deposition was produced by Wilson  
24 Getty LLP, the attorneys who defended Plum and others in the underlying Harris  
25 v. Plum Healthcare, et al., in response to a third party subpoena for production of  
26 documents served by defendants in this case.

27           19. Attached hereto as Exhibit 4 is a true and correct copy of portions of  
28 the deposition of Janice Margaret Nargi, known as Janice Harris at the time of

1 the accident and lawsuit, taken on March 29, 2016. The deposition was  
2 produced by Wilson Getty LLP in response to a third party subpoena for  
3 production of documents served by defendants in this case.

4 20. Attached hereto as Exhibit 5 is a true and correct copy of the agenda  
5 for the June Lake budget retreat, Bates Nos. WG 575-577, which was produced  
6 by Wilson Getty LLP in response to a third party subpoena for production of  
7 documents served by defendants in this case.

8 21. Attached hereto as Exhibit 9 is a true and correct copy of  
9 defendants' responses to plaintiffs' interrogatories, set No. 1, setting forth all  
10 bases and policy exclusions relied on by defendant to support its denial of  
11 plaintiffs' claim, which responses were served October 13, 2016.

12 22. Attached hereto as Exhibit 12 is a true and correct copy of the  
13 retainer agreement between plaintiffs and my firm, previously produced and  
14 Bates Nos. Plum 250-252.

15 23. Attached hereto as Exhibit 14 is a true and correct copy of  
16 plaintiffs' experts' Rule 26 report, dated January 3, 2017.

17 24. On April 5, 2017, 5 days before these opposition papers were due,  
18 Homeland's new attorneys provided copies of what they claim were timely  
19 responses to plaintiffs' requests for admission. The cover letter asserted the  
20 responses were "produced with the case file from Selman Breitman,"  
21 Homeland's original attorneys. (See Exhibit 15.) To be sure, no responses were  
22 ever received by my office or my co-counsel, who has a different mailing address  
23 in a different city. Any claim to the contrary will have to be addressed by  
24 Homeland if and when they move for relief from their failure to timely respond  
25 to the requests for admission.

26 25. Moreover, Homeland's new attorneys' contention that the requests  
27 were timely responded to because he "found" a copy in the Selman Breitman file  
28 does not add up. Plaintiffs notified Homeland's former attorneys on February

1 17, 2017 that the RFAs had not been answered. (Exhibit 13.) Homeland's  
2 former attorneys told plaintiffs' counsel a copy of the responses would be  
3 provided after the meet and confer discussion on February 22, 2017. Selman  
4 Breitman remained attorneys of record until March 23, 2017, when notice of  
5 withdrawal was filed with the Court. (Docket No. 45.) At no time since the  
6 notice on February 17<sup>th</sup> were copies of the purportedly timely RFA responses  
7 ever served. April 5, 2017, was the first time.

8  
9 I declare under penalty of perjury under the laws of the State of California  
10 and the United States of America that the foregoing is true and correct. Executed  
11 this 10<sup>th</sup> day of April, 2017, at San Diego, CA.

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13 /s/ Richard Huver  
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**INDEX TO EXHIBITS ATTACHED TO  
DECLARATION OF RICHARD A. HUVER**

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